



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP- 175018

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**PRELIMINARY RECITALS**

On June 11, 2016, petitioner filed a hearing request under Wis. Admin. Code, §HA 3.05(1), to review a decision by the Portage County Dept. of Human Services regarding FoodShare benefits (FS). The hearing was held on July 5, 2016, at Stevens Point, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether petitioner was overpaid FS because he did not report a new address timely.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: [REDACTED]  
Portage County Dept. of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. Petitioner received FS in 2013 and 2014 in a household that included his wife. At the initial application they reported that they paid \$552 per month in rent.

3. At a review on January 3, 2014, petitioner reported that they moved to a new address where the rent was \$315 per month. The move occurred in July. Petitioner did not report the move until the January, 2014 review.
4. The county determined that if the change had been reported timely the couple would have received less FS because the shelter deduction would have been smaller beginning August 1, 2013. See Exhibit 4 for the original budgets and the corrected budgets.
5. By a notice dated May 3, 2016 the county informed petitioner that he and his wife were overpaid \$428 in FS from August 1, 2013 through January 1, 2014, claim no. [REDACTED].

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. One deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(6); FS Handbook, App. 4.6.7. Thus if rent is reduced the amount of FS might also be reduced.

An FS household must report a change of address or a change in rent within ten days of the change. 7 C.F.R. §273.12(c)(2)(i); FS Handbook, App. 6.1.1.1. The change affects the next month's FS amount. FS Handbook, App. 6.1.3.6.

In this case petitioner did not report his change of address and lower rent amount until six months after the couple moved. Thus the county correctly determined that they were overpaid FS because if they had reported the change timely FS would have been reduced August 1, 2013. I find no error in the county's overpayment calculation.

Petitioner testified that they did not understand the reporting requirement. Several notices were issued to them explaining the requirement, but even if they did not understand, the error does not have to be intentional. They still were overpaid. Petitioner also said that they had no way to repay the overpayment. The Division of Hearings and Appeals only decides whether the overpayment was determined correctly; I do not have authority to reduce the amount based upon good cause or inability to pay. Payments issues would have to be handled with the Department's Public Assistance Collection Unit.

### **CONCLUSIONS OF LAW**

The county correctly determined that petitioner was overpaid \$428 in FS because he failed to report a move to a new address timely.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of July, 2016

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 7, 2016.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability